

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

XIUFANG SITU, et al.,

Plaintiffs,

V.

MICHAEL O. LEAVITT,

Defendant.

NO. C06-2841 TEH

ORDER DISMISSING PLAINTIFFS
EMERY, SCHWARTZLE, AND
SNIDER

On December 18, 2006, this Court granted in part and denied in part Defendant's motion to dismiss. The Court further ordered Plaintiffs to show cause as to why Plaintiffs Lillian Emery, Vincent Perillo, Ludivina Schwartzle, and Mildred Snider should not be dismissed from this case based on Defendant's uncontested representation that Plaintiffs Emery and Snider had passed away and on Plaintiffs' counsel's inability to contact Plaintiffs Perillo or Schwartzle.

17 Plaintiffs filed a timely response to the Court's order to show cause on January 16,
18 2007. Defendant had an opportunity to reply to Plaintiffs' response by January 23, 2007, but
19 failed to do so. Upon careful consideration of Plaintiffs' supplemental statement and
20 Defendant's failure to respond, the Court finds good cause to rule as follows:

21 1. Plaintiffs acknowledge that Plaintiffs Emery and Snider passed away after the
22 filing of the complaint and do not contest their dismissal from this case. The Court therefore
23 dismisses Plaintiffs Emery and Snider with prejudice.

24 2. Plaintiffs' counsel have regained contact with Plaintiff Schwartzle, but
25 Ms. Schwartzle has been too ill to sign a declaration that supports the allegations in the
26 complaint regarding her problems with Medicare Part D. Although Plaintiffs do not
27 explicitly consent to the dismissal of Ms. Schwartzle's claims, Ms. Schwartzle cannot be an
28 adequate representative of the class when she is unable even to sign a declaration.

United States District Court
For the Northern District of California

1 Accordingly, while Ms. Schwartzle may remain in the case as a class member, the Court
2 dismisses her as a named class representative.

3 Plaintiffs' counsel have also regained contact with Plaintiff Perillo and submitted a
4 declaration by Mr. Perillo to support relevant allegations in the complaint. Because
5 Defendant opted not to file a reply to Plaintiffs' response to the order to show cause, he
6 apparently no longer contests Mr. Perillo's ability to remain in this case at this stage of the
7 litigation. Consequently, Plaintiff Perillo shall not be dismissed as a named class
8 representative.

9 * * *

10 Now that the Court has resolved all outstanding issues regarding Defendant's motion
11 to dismiss, IT IS HEREBY ORDERED that Plaintiffs shall file their amended complaint,
12 removing reference to the dismissed individual and organizational plaintiffs and providing
13 additional allegations regarding Plaintiff Action Alliance of Senior Citizens of Greater
14 Philadelphia and Plaintiff California Alliance for Retired Americans, on or before **Friday,**
15 **February 9, 2007.**

16 IT IS FURTHER ORDERED that the parties shall appear before the Court for a case
17 management conference on **Monday, March 19, 2007, at 1:30 PM.** The parties shall meet
18 and confer and file a joint case management conference statement on or before **Monday,**
19 **March 12, 2007.**

20
21 **IT IS SO ORDERED.**

22
23 Dated: 01/24/07


24 THELTON E. HENDERSON, JUDGE
25 UNITED STATES DISTRICT COURT
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